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California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE ENRIQUE RODRIGUEZ,

Defendant and Appellant.

F076635

(Super. Ct. No. F17902593)

**ORDER MODIFYING OPINION
AND DENYING PETITION FOR
REHEARING**

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the nonpublished opinion filed herein on July 17, 2020, be modified as set forth below:

1. The first sentence of the last paragraph on page 15 shall be deleted and replaced with the following:

Additionally, we agree with the People that the court's pronouncement of a life term with the possibility of parole with no designated minimum term on count 3 (also reflected on the abstract of judgment) is incorrect in light of defendant's previous two strikes.

Appellant's petition for rehearing is denied. Except for the modifications set forth herein, the opinion previously filed remains unchanged. The modification does not alter the judgment.

SMITH, J.

WE CONCUR:

FRANSON, Acting P.J.

SNAUFFER, J.

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Defendant and Appellant.

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(Super. Ct. No. F17902593)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. James Petrucelli, Judge.

Law Offices of Allen G. Weinberg and Allen G. Weinberg, under appointment by the Court of Appeal, Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Lewis A. Martinez and Louis M. Vasquez, Deputy Attorneys General, for Plaintiff and Respondent.

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INTRODUCTION

A jury convicted defendant Jose Enrique Rodriguez of corporal injury on a spouse or cohabitant (count 1), assault with a deadly weapon (count 2), and torture (count 3) after he beat his girlfriend with a wooden board. The jury found true allegations defendant personally inflicted great bodily injury (as to counts 1 and 2) pursuant to Penal Code¹ section 12022.7, subdivision (e), and defendant used a deadly weapon (as to count 1) pursuant to section 12022, subdivision (b)(1). The jury also found true allegations defendant had two prior strike convictions that qualified as prior serious felony convictions under section 667, subdivision (a)(1), giving rise to two 5-year enhancements. The court sentenced defendant to an indeterminate term of 25 years to life on count 1 and a determinate term of 16 years' imprisonment for the related enhancements. It imposed and stayed additional sentences on counts 2 and 3 and the related enhancements.

On appeal, defendant argues the case should be remanded for a new sentencing hearing to permit the court to exercise its discretion and decide whether to strike the two prior serious felony enhancements in light of Senate Bill No. (2017-2018 Reg. Sess.) (Senate Bill No. 1393). He further contends, upon remand, the trial court should be precluded from imposing two prior serious felony enhancements because the enhancements arose from felonies that were not brought and tried separately. Finally, he argues the abstract of judgment should be amended to correct alleged clerical errors related to the sentences.

We remand for further proceedings consistent with this opinion. In all other respects, we affirm the judgment.

¹ Subsequent statutory references are to the Penal Code unless otherwise specified.

FACTUAL AND PROCEDURAL BACKGROUND

At around 10:00 a.m. on January 21, 2017, 19-year-old L.D. picked up her mother, Yvette M., to run errands before L.D.'s brother's birthday party at 3:00 p.m. L.D. dropped Yvette back at her apartment at around 11:00 a.m. and Yvette had no visible injuries at the time. Two hours later, Yvette texted L.D. that she was going to see defendant who was her boyfriend at the time. L.D. did not hear from Yvette again until 4:15 p.m. when Yvette called L.D. sounding distressed and upset.

Yvette asked L.D. to pick her up from a liquor store because defendant had beaten her. Yvette told L.D. "she had barely escaped." L.D. called her grandmother D.D., Yvette's mother, and asked her to meet her at the liquor store. L.D. arrived at the store first and found Yvette lying on the floor in the bathroom. Yvette was holding a rag to her arm and the back of her head to try to stop the bleeding. Yvette told L.D. defendant had beaten her because he thought she had sent people to "jump" him the day before.

L.D.'s grandparents and her brother arrived minutes later. When D.D. saw Yvette, Yvette was "helpless, balled up, bloody," "[s]he didn't look human," "she looked dead." There was blood everywhere and Yvette could not move; she had a big gash on her forehead. D.D. asked Yvette who had done this to her and Yvette told her defendant had beaten her with a two-by-four. Yvette's father and son assisted her to the car so they could take her to the hospital. L.D. saw defendant walk back into his house across the street. She told her grandparents and D.D. called the police. Yvette did not want D.D. to call the police because she was scared defendant would come after her or her children.

When police arrived, Yvette was being transferred from the car to an ambulance. Yvette's face was swollen, her eyes were almost shut, she was black and blue, covered in blood, and had a large laceration on the back of her head. Yvette told the officers she had been beaten up by her boyfriend who lived across the street. She identified defendant as her boyfriend. Police responded to defendant's residence where they found blood on the

sheets in the bedroom. Yvette was taken to the emergency room where she received staples in her head to close the wound. Four days after the incident, an officer interviewed Yvette. Yvette told the officer defendant pulled her into the house and beat her with a two-by-four while she laid on the ground trying to shield herself.

At trial, however, Yvette denied defendant was the perpetrator and testified he had never hit her. She testified she went to defendant's house on January 21, 2017, and another individual, Robert S., was also there. She recalled defendant leaving the house and then she was attacked. She was hit in the back of the head twice by a two-by-four piece of wood. She identified Robert S. as the attacker. She did not recall anything after the second blow besides going to the liquor store to call her daughter. She also recalled going to the hospital, getting staples in her head, and that her body hurt all over. She denied speaking with an officer days after the attack. The People presented a domestic violence expert at trial who testified why a victim may not cooperate with the prosecution of her abuser.

Defendant testified Yvette was an alcoholic drug addict with mental health problems. According to defendant, on the date of the incident, Yvette arrived at his house sweating, out of breath, and bloody saying "they got me," "they hit me." She ran to the back room and threw herself on the bed. She then said she needed a cigarette and left. Defendant did not see her after she left and he was arrested later that evening. Defendant acknowledged he had plywood in his room but testified the wood was strapped together and could not be picked up individually without it pinching.

The jury convicted defendant of corporal injury on a spouse or cohabitant (count 1), assault with a deadly weapon (count 2), and torture (count 3). The jury found true allegations defendant personally inflicted great bodily injury (as to counts 1 and 2) pursuant to section 12022.7, subdivision (e), and defendant used a deadly weapon (as to count 1) pursuant to section 12022, subdivision (b)(1). The jury also found true

allegations defendant had two prior serious or violent felony convictions that qualified as strikes and prior serious felony convictions under section 667, giving rise to two 5-year enhancements.

DISCUSSION

I. The Matter is Remanded to Permit the Court to Exercise Its Newfound Discretion Pursuant to Senate Bill No. 1393

Defendant first argues his case should be remanded to permit the court to exercise its discretion regarding whether to strike his prior serious felony enhancements under Senate Bill No. 1393. We agree.

A. Sentencing Hearing

Before sentencing, defendant filed a motion pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, asking the court to strike his prior strike convictions on the basis of remoteness. The People opposed the motion arguing, though the convictions were remote in time, they established “a path of criminality that has stayed consistent,” they were “all domestic violence offenses,” and “all appear to be egregious in nature.” The court denied defendant’s *Romero* motion and concluded it was “not comfortable striking the prior convictions” with no further comment.

Before imposing defendant’s sentence, the court noted defendant “has engaged in violent conduct, which indicates a serious danger [to] society,” his “prior convictions as an adult are numerous and of increasing seriousness,” and his “prior performance on probation or parole has been unsatisfactory.” In discussing probation, the court explained, “[r]ehabilitation services and local sanctions have had little effect in deterring the defendant from further criminality, deeming the defendant a danger to the community. In the current matter[,] the defendant continually struck the victim with a wooden two-by-four, leaving her face and eyes swollen and bruised, along with other visible injuries throughout her body. The brutal attack left the victim temporarily

incapable of walking and requiring assistance.” The court concluded imprisonment was warranted “[g]iven the serious nature of the current offense, compounded with the violent nature exhibited by the defendant throughout the years with different victims.”

The court then sentenced defendant to an indeterminate term of 25 years to life on count 1 enhanced by an aggregate determinate term of 16 years’ imprisonment—the aggravated term of five years pursuant to section 12022.7, subdivision (e), for the great bodily injury allegation, an additional one year pursuant to section 12022, subdivision (b)(1), for the personal use of a deadly or dangerous weapon allegation, plus 10 years (five years for each prior serious felony enhancement) pursuant to section 667, subdivision (a)(1). On count 2, the court sentenced defendant to an indeterminate term of 25 years to life enhanced by the aggravated term of five years’ imprisonment pursuant to section 12022.7, subdivision (e), for the great bodily injury allegation. On count 3, the court sentenced defendant to an indeterminate life term. The court stayed defendant’s sentences on counts 2 and 3 pursuant to section 654.

B. Analysis

Senate Bill No. 1393, signed into law on September 30, 2018, amends sections 667 and 1385 to provide the trial court with discretion to dismiss, in furtherance of justice, five-year enhancements pursuant to section 667, subdivision (a)(1). The new law took effect on January 1, 2019. The law is applicable to those parties, like defendant, whose appeals were not final on the law’s effective date.

Here, the jury found true enhancement allegations that defendant had two prior serious felony convictions pursuant to section 667, subdivision (a)(1). Defendant’s sentence was enhanced by 10 years, five years for each prior serious felony enhancement. Defendant now seeks remand for a new sentencing hearing to permit the court to exercise its discretion regarding whether to strike these enhancements in light of Senate Bill No. 1393. The People concede Senate Bill No. 1393 applies retroactively. However, they

respond the record “clearly indicates” the court would not have struck defendant’s prior serious felony enhancements even if it had the discretion to do so; thus, remand is not required. In support, the People rely upon *People v. Jones* (2019) 32 Cal.App.5th 267 (*Jones*) and *People v. McVey* (2018) 24 Cal.App.5th 405 (*McVey*). They argue the court denied defendant’s *Romero* motion, imposed the aggravated sentence for defendant’s section 12022.7, subdivision (e) enhancements, and highlighted the nature of the offense and defendant’s criminal history during the sentencing hearing. We agree with the parties that Senate Bill No. 1393 is retroactive and conclude remand is appropriate.

1. Senate Bill No. 1393 is Retroactive

“[W]e presume that newly enacted legislation mitigating criminal punishment reflects a determination that the ‘former penalty was too severe’ and that the ameliorative changes are intended to ‘apply to every case to which it constitutionally could apply,’ which would include those ‘acts committed before its passage[,] provided the judgment convicting the defendant of the act is not final.’ ([*In re*] *Estrada* [(1965)] 63 Cal.2d [740,] 745.) The *Estrada* rule rests on the presumption that, in the absence of a savings clause providing only prospective relief or other clear intention concerning any retroactive effect, ‘a legislative body ordinarily intends for ameliorative changes to the criminal law to extend as broadly as possible, distinguishing only as necessary between sentences that are final and sentences that are not.’” (*People v. Buycks* (2018) 5 Cal.5th 857, 881; accord, *People v. Valenzuela* (2019) 7 Cal.5th 415, 428; *People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 307-308.)

Courts of Appeal considering Senate Bill No. 1393 and, in an analogous context, Senate Bill No. 620 (2017-2018 Reg. Sess.) (Senate Bill No. 620) have uniformly held the changes apply retroactively to judgments not yet final on appeal. (E.g., *People v. Zamora* (2019) 35 Cal.App.5th 200, 207-208 [Sen. Bills Nos. 620 & 1393]; *People v. Garcia* (2018) 28 Cal.App.5th 961, 972-973 [Sen. Bill No. 1393]; *People v. Chavez*

(2018) 22 Cal.App.5th 663, 711-712 [Sen. Bill No. 620]; *People v. Arredondo* (2018) 21 Cal.App.5th 493, 506-507 [Sen. Bill No. 620].)

Senate Bill No. 1393 does not contain a savings clause and there is no indication the Legislature intended any limitation on its retroactive application. Accordingly, we accept the People's concession that Senate Bill No. 1393 applies to this case pursuant to *In re Estrada*, *supra*, 63 Cal.2d 740.

2. Remand is Appropriate

The California Supreme Court has held “[d]efendants are entitled to sentencing decisions made in the exercise of the “informed discretion” of the sentencing court. [Citations.] A court which is unaware of the scope of its discretionary powers can no more exercise that “informed discretion” than one whose sentence is or may have been based on misinformation regarding a material aspect of a defendant’s record.’ [Citation.] In such circumstances, we have held that the appropriate remedy is to remand for resentencing unless the record ‘clearly indicate[s]’ that the trial court would have reached the same conclusion ‘even if it had been aware that it had such discretion.’” (*People v. Gutierrez* (2014) 58 Cal.4th 1354, 1391 (*Gutierrez*).) Post-*Gutierrez*, most of the published cases considering whether remand is appropriate to allow the trial court to exercise its discretion in the first instance have concluded remand is appropriate. (See e.g., *People v. Johnson* (2019) 32 Cal.App.5th 26, 69 [Sen. Bills Nos. 1393 & 620]; *People v. Garcia*, *supra*, 28 Cal.App.5th at p. 973 [Sen. Bill No. 1393]; *People v. Almanza* (2018) 24 Cal.App.5th 1104, 1109-1111 [Sen. Bill No. 620]; *People v. Billingsley* (2018) 22 Cal.App.5th 1076, 1081-1082 [Sen. Bill No. 620]; *People v. McDaniels* (2018) 22 Cal.App.5th 420, 427-428 [Sen. Bill No. 620].) *Jones and McVey*, cited by the People and in which the appellate courts declined to remand, are in the minority.

In *McVey*, the Court of Appeal held remand in light of Senate Bill No. 620 to

permit the court to exercise its discretion regarding whether to strike the defendant's firearm enhancement "would serve no purpose but to squander scarce judicial resources." (*McVey*, *supra*, 24 Cal.App.5th at p. 419.) In so holding, the *McVey* court noted the trial court "had discretion to impose a 3-, 4-, or 10-year prison term for the firearm enhancement." (*Ibid.*) In imposing a 10-year term for the firearm enhancement, the trial court "identified several aggravating factors, including the lack of significant provocation, [the defendant]'s disposition for violence, his lack of any remorse, and his 'callous reaction' after shooting an unarmed homeless man six or seven times. These factors, the court said, far outweighed any mitigating factors." (*Ibid.*) And the trial court expressly stated on the record, "[T]his is as aggravated as personal use of a firearm gets," and "the high term of 10 years on the enhancement is the only appropriate sentence on the enhancement." (*Ibid.*) The *McVey* court held given "the trial court's express consideration of the factors in aggravation and mitigation, its pointed comments on the record, and its deliberate choice of the highest possible term for the firearm enhancement, there appears no possibility that, if the case were remanded, the trial court would exercise its discretion to strike the enhancement altogether." (*Ibid.*)

In *Jones*, the Court of Appeal also held remand was inappropriate in light of the record. (*Jones*, *supra*, 32 Cal.App.5th at pp. 273-275.) In *Jones*, the defendant was convicted of attempted premeditated murder, assault with a deadly weapon and assault likely to produce great bodily injury after he violently attacked a bar employee with a knife after the bar closed, an attack that stemmed from a third party's earlier dissatisfaction over how a drink was mixed at the bar. (*Id.* at pp. 269-270.) The defendant committed the crimes within months of being released from prison after serving a 10-year sentence for stabbing his ex-wife multiple times with a knife. (*Id.* at pp. 273-274.) In concluding remand for resentencing in light of Senate Bill No. 1393 was not warranted, the Court of Appeal stated, "Besides not exercising its discretion for

leniency when it could have, the trial court made clear its intention to impose the most stringent sentence it could justifiably impose. It stated there was no doubt the verdict was correct, [the] defendant's actions were premeditated, dangerous, senseless and absurd, he attempted to kill [the victim] only a few months after being released from prison where he had been for 10 years, and the court took 'great satisfaction' in imposing the 'very lengthy sentence' it imposed." (*Id.* at pp. 274-275.)

Here, the trial court rejected defendant's request to strike his prior serious felony convictions under *Romero, supra*, 13 Cal.4th 497 and it imposed the five-year upper term on the personal infliction of great bodily injury enhancement. (See § 12022.7, subd. (e).) However, the record here does not include pointed comments such as those at issue in *McVey* and *Jones*, and at the time defendant was sentenced, the court lacked the discretion to strike or stay the prior serious felony enhancement. Indeed, the court expressly stated defendant was "mandated to serve an additional and consecutive term of five years for each prior serious felony conviction." We cannot conclude this record reflects a clear indication by the trial court that it would not have struck these enhancements if it had discretion to do so.

Because defendant is entitled to be sentenced in the exercise of informed discretion, remand is appropriate so the trial court may exercise its discretion in the first instance in light of Senate Bill No. 1393. We express no opinion on how the trial court should exercise its discretion on remand.

II. Defendant's Prior Serious Felony Convictions Were Brought and Tried Separately

Defendant next argues one of his prior serious felony enhancements must be stricken because the two alleged prior serious felonies were not brought and tried separately. We disagree.

A. Procedural History

In the first amended information in this case, defendant was charged with two prior serious felony convictions that also qualified as strike priors under the Three Strikes Law. The first prior alleged was a criminal threats conviction (§ 422) in Superior Court No. 602638-9. The second prior alleged was an assault by means likely to produce great bodily injury (§ 245, subd. (a)(1)) in Superior Court No. 595422-7. The court held a bifurcated proceeding on the priors.

The People submitted the criminal complaint from Superior Court No. 595422-7, charging defendant, in relevant part, with assault upon Rogelio Hernandez on or around May 15, 1997. The People also submitted a separate information from Superior Court No. 602638-9 charging defendant with making criminal threats to two Jane Does on or about October 20, 1997. The People also presented evidence defendant pled no contest to both charges on February 9, 1998, memorialized in a single change of plea form that listed both case numbers. The change of plea form states defendant pled “[s]traight up” to the section 245, subdivision (a)(1) charge [case No. 595422-7] and stipulated to a term of 11 years eight months. It also states defendant pled no contest to all the charges in case No. 602638-9.

The court held the People established defendant suffered the prior convictions beyond a reasonable doubt and that they qualified as strike priors. During sentencing, the court noted these convictions were “brought and tried separately” and it imposed separate enhancement terms for each conviction.

B. Standard of Review and Applicable Law

Section 667, subdivision (a)(1), provides in pertinent part:

“Any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for

the present offense, a five-year enhancement for each such prior conviction on charges *brought and tried separately*.” (Emphasis added.)

To satisfy the “brought and tried separately” requirement, enhancements pursuant to section 667, subdivision (a), are supported where the underlying proceedings were formally distinct from filing to adjudication of guilt. (*In re Harris* (1989) 49 Cal.3d 131, 136; *People v. Wagner* (1994) 21 Cal.App.4th 729, 737 (*Wagner*).) “Formal distinctions” include the use of separate case numbers and separate charging documents as well as the absence of evidence the cases have been otherwise consolidated. (*Wagner, supra*, 21 Cal.App.4th at p. 737; see *People v. Wiley* (1995) 9 Cal.4th 580, 592-593.)

The *Wagner* court further held there was no requirement that “multiple offenses resolved by plea be adjudicated in separate proceedings at separate times to qualify as separately tried under section 667.” (*Wagner, supra*, 21 Cal.App.4th at p. 737.) On the other hand, the dissent in *Wagner* asserted “prior offenses are not ‘tried separately’ unless inter alia the ‘ultimate adjudication of guilt’--in this case the pleas--are made in ‘felony proceedings [that are] *totally separate*’ including all those ‘leading to the ultimate adjudication of guilt.’” (*Wagner, supra*, 21 Cal.App.4th at p. 740, diss. opn. of Blease, Acting P.J.)

We review a trial court’s findings on the issue of whether a defendant’s prior convictions were brought and tried separately for sufficiency of the evidence. (See *People v. Wiley, supra*, 9 Cal.4th at pp. 592-593.)

C. Analysis

Defendant argues his two prior serious felony convictions were not “brought and tried separately” as required by section 667, subdivision (a)(1) because they arose from complaints adjudicated in a single plea agreement. Therefore, defendant argues, one of the five-year enhancements based on these convictions must be stricken. Defendant acknowledges our sister appellate court rejected a similar argument in *Wagner*, but he

argues the majority opinion in *Wagner* should be repudiated and its dissent adopted. We disagree with defendant's contentions and conclude sufficient evidence supports the trial court's conclusion the prior convictions giving rise to defendant's section 667, subdivision (a)(1) enhancements were brought and tried separately.

Here, the People presented evidence defendant was charged with each prior serious felony offense in separate charging documents, on different dates, and that the events giving rise to the convictions occurred on different dates, months apart. The change of plea form reflects defendant entered separate pleas in each case. The formal distinction between defendant's cases is further supported by the retention of separate case numbers. There is no evidence a formal consolidation of the cases was sought at any time.

On this record, we conclude sufficient evidence supports the trial court's conclusion defendant's prior serious felony convictions remained formally distinct through the adjudication of guilt. (See *People v. Soria* (2010) 48 Cal.4th 58, 65 ["When several cases are resolved by a single plea bargain in which the defendant enters separate pleas, it is plain that there is one bargain but multiple cases"]; *People v. Wiley, supra*, 9 Cal.4th at p. 590 [underlying "facts" relevant to determination of whether charges have been "brought and tried separately" include whether charges were filed in single complaint or multiple complaints].) That the two charges were resolved in the same plea agreement does not change our conclusion. Rather, the California Supreme Court has held it is "settled" that "[u]nconsolidated cases resolved jointly by plea bargain remain formally distinct for purposes of sentencing under section 667." (*People v. Soria, supra*, 48 Cal.4th at p. 64; accord *People v. Smith* (1992) 7 Cal.App.4th 1184, 1193 [separately filed cases resolved by guilty plea on same date are nevertheless "brought and tried separately" for purposes of the enhancement provisions of section 667].) Thus, we agree with the *Wagner* majority's conclusion that "[t]he mere fact that [the] defendant, pursuant

to a plea agreement, entered pleas to both offenses in one proceeding, and was ... sentenced for both offenses ... does not overcome the conclusion, based on the facts just noted, that these offenses were ‘brought and tried separately’ for section 667 purposes.” (*Wagner, supra*, 21 Cal.App.4th at p. 737;]; see also *People v. Gonzales* (1990) 220 Cal.App.3d 134, 140-141 [concluding temporal separation is not required, as public policy is served by efficient disposition of multiple cases in contemporaneous proceedings]; *People v. Thomas* (1990) 219 Cal.App.3d 134, 145-147 [proceedings were “formally distinct” and thus “brought and tried separately” where defendant pled guilty and was sentenced on the same date in two separately-filed, non-consolidated cases].)

We reject defendant’s second contention.

III. The Court Did Not Err By Using Separate Forms for the Determinate and Indeterminate Sentences and the Abstract of Judgment Must Be Amended to Reflect the Correct Sentence On Count 3

In his final issue, defendant argues the trial court’s use of separate abstracts of judgment for the indeterminate and determinate terms is “confusing” and “unnecessary” and the court erred by indicating the sentence on count 1 is to be served consecutively. The People deny the court erred in these respects, but argue the abstract should be modified to reflect defendant’s sentence on count three is for a term of 25 years to life as opposed to a life term. Defendant does not respond to this argument. We agree with the People.

“Indeterminate term crimes and determinate term crimes are subject to two different sentencing schemes.” (*People v. Neely* (2009) 176 Cal.App.4th 787, 797.) Indeterminate sentencing under the Three Strikes Law where a defendant has two prior strikes is governed by section 667, subdivision (e)(2)(A) and sentencing for determinate-term crimes is governed by sections 1170 and 1170.1. (§§ 667, subd. (e)(2)(A), 1170, 1170.1.) “Sentencing under these two sentencing schemes must be performed separately and independently from each other.” (*People v. Neely, supra*, 176 Cal.App.4th at p. 797;

see also *People v. Garza* (2003) 107 Cal.App.4th 1081, 1094.) Only after each is determined are they added together to form the aggregate term of imprisonment. (*People v. Neely, supra*, 176 Cal.App.4th at p. 797.)

Here, the abstract of judgment appropriately consists of two forms—one for defendant’s indeterminate sentence and one for his determinate sentence. The indeterminate sentence form (CR-292) lists the 25 years to life sentences imposed for counts 1 and 2 and a life with parole sentence on count 3. The determinate sentence form (CR-290) lists the determinate terms, including two five-year section 12022.7, subdivision (e) enhancements (one for count 1 and one for count 2), a one-year section 12022, subdivision (b)(1) enhancement to count 1, and two 5-year prior serious felony enhancements pursuant to section 667, subdivision (a)(1). The trial court did not err in listing the indeterminate and determinate terms on the separate corresponding forms.

Additionally, section 669 expressly provides, “[l]ife sentences... may be imposed to run consecutively with ... any term imposed for applicable enhancements, or with any other term of imprisonment for a felony conviction. Whenever a person is committed to prison on a life sentence which is ordered to run consecutive to any determinate term of imprisonment, the determinate term of imprisonment shall be served first.” Accordingly, here, the court correctly ordered, and the abstract accurately reflects, defendant’s 25 years to life indeterminate term on count 1 to run consecutively to the determinate “term imposed for applicable enhancements.” (See § 669.)

Additionally, we agree with the People that the court’s pronouncement of a life term without parole with no designated minimum term on count 3 (also reflected on the abstract of judgment) is incorrect in light of defendant’s previous two strikes. Rather, section 667, subdivision (e)(2)(A) provides defendant is to be sentenced to “an indeterminate term of life imprisonment with a minimum term ... calculated as the greatest of: [¶] (i) Three times the term otherwise provided as punishment for each

current felony conviction subsequent to the two or more prior serious or violent felony convictions; [¶] (ii) Imprisonment in the state prison for 25 years; [¶] (iii) The term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.”

Section 206.1 provides that torture (§ 206) is “punishable by imprisonment in the state prison for a term of life.” Section 3046, subdivision (a)(1) provides that the minimum parole eligibility for a life term is seven years. Thus, under these provisions, by sentencing defendant to a term of life with parole on count 3, the court effectively sentenced him to a minimum term of seven years. However, section 667, subdivision (e)(2)(A) mandates the minimum term should have been the greater term of 25 years. Thus, defendant’s sentence was unauthorized and, upon remand, we direct the trial court to correct the sentence on count 3 to be a term of 25 years to life imprisonment and order the abstract of judgment to be modified accordingly. (See *People v. Scott* (1994) 9 Cal.4th 331, 354 [“the ‘unauthorized sentence’ ... constitutes a narrow exception to the general requirement that only those claims properly raised and preserved by the parties are reviewable on appeal”; “[A] sentence is generally ‘unauthorized’ where it could not lawfully be imposed under any circumstance in the particular case.”]; *People v. Vizcarra* (2015) 236 Cal.App.4th 422, 432 [“It is well established in California ... that a trial court’s failure ... to pronounce sentence on a statutory sentence-enhancement allegation based upon a finding by the trier of fact or an admission by the defendant that the allegation is true ... results in an unauthorized sentence” and “such an unauthorized sentence is subject to correction by an appellate court ‘whenever the error comes to the attention of the court, even if the correction creates the possibility of a more severe punishment’”].)

DISPOSITION

We remand this matter for the trial court to set a resentencing hearing and to exercise its discretion regarding whether to dismiss the section 667, subdivision (a) enhancements in light of Senate Bill No. 1393. The trial court is also ordered to prepare an amended abstract of judgment reflecting a 25-years-to-life sentence on count 3 and to forward a copy of the amended abstract to the Department of Corrections and Rehabilitation. In all other respects, we affirm the judgment.

SMITH, J.

WE CONCUR:

FRANSON, Acting P.J.

SNAUFFER, J.